

respect to the control device being electromechanical or an optical control device, claims 5 and 6 have been canceled by this Amendment. Withdrawal of the objection is respectfully requested.

Claim 6 was rejected under 35 U.S.C. §112, first paragraph. Without conceding the propriety of this rejection, claim 6 has been canceled.

Claims 3 and 4 were rejected under 35 U.S.C. §112, second paragraph. Claims 3 and 4 have been amended herein to change the "lever profile" to the substantially continuous profile to maintain proper antecedent basis. Withdrawal of the rejection is requested.

Claims 1-5 and 7-9 were rejected under 35 U.S.C. §102(b) over U.S. Patent No. 5,577,417 to Fournier. This rejection is respectfully traversed.

Under 35 U.S.C. §102(b), anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference. See, for example, *Akzo N.V. v. USITC*, 1 USPQ2d 1241 (Fed. Cir. 1986), *cert. denied*, 482 U.S. 909 (1987). An important object of the present invention is to provide a control lever wherein inadvertent motion caused by inertia shifts in the operator's environment can be substantially eliminated. The control lever includes a fixed base portion that enables the operator to resist the effects of external forces. The Fournier patent is unrelated to such an object, and as a consequence, the structure described therein does not meet the features of the claimed invention.

The Office Action contends that Fournier discloses "a fixed base portion 12." To the contrary, however, Fournier in fact requires that its handle 10 be entirely infinitely

movable. In the embodiment illustrated in Figure 2, the handle 10 is attached to an end of a flexible cord 22, and in the embodiment illustrated in Figure 4, the handle 10 is secured to an articulated arm system 52. Fournier even specifically describes that "the active part of the handle may either only be connected to the support by a flexible cord in which pass the movement transmission means, or mechanically connected to the support by an articulated arm along which can pass the movement transmission means." Column 3, lines 6-10. Moreover, the handle 10 in Fournier is provided with an active part on which acts the hand of the operator as well as one or two tactile and/or kinesthetic information return parts. In order to effect the specific functionality described in the Fournier patent, the active part 12 (referred to as a "fixed base portion" in the Office Action) is neither fixed nor fixable, as such a construction would render the apparatus inoperative for its intended purpose.

Additionally, claim 1 has been amended to clarify this important distinction between the invention and the Fournier patent. In particular, claim 1 has been amended to recite that the movable upper portion and the fixed base portion define means for an operator to resist effects of external forces via one hand while maintaining control of the movable upper portion with the same hand. Since this structure is lacking in the Fournier patent, Applicant respectfully submits that the rejection is misplaced.

With respect to the dependent claims, Applicant submits that these claims are allowable at least by virtue of their dependency on an allowable independent claim.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 10-13 were rejected under 35 U.S.C. §102(b) over Fournier. This rejection is respectfully traversed.

Claim 10 defines structure similar to that discussed above with respect to claim 1. In a similar manner, Applicant respectfully submits that the Fournier patent lacks at least the claimed fixed base portion fixedly securable to a surface of the machinery. Additionally, claim 10 has been amended similar to claim 1 to recite that the fixed base portion and the control portion define means for an operator to resist effects of external forces via one hand while maintaining control of the control portion with the same hand. Applicant respectfully submits that dependent claims 11-13 are also allowable at least by virtue of their dependency on an allowable independent claim.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 14 was rejected under 35 U.S.C. §102(e) over Evert et al. This rejection is respectfully traversed.

The Office Action contends that Evert discloses "a fixed base portion 11 fixedly secured to the machine frame 1." To the contrary, however, Evert describes that the lever 11 can be pivoted around a first axis 12 that extends substantially in a transverse or lateral direction of the industrial truck . . . to control the vertical movement of the load holding device 5. See, column 4, lines 1-5. Since at least this feature of the invention is lacking in the Evert patent, Applicant submits that the rejection is misplaced.

Additionally, claim 14 has been amended to recite that the fixed base portion provides support for an operator to resist effects of external movements resulting from movements of the machine. Since the lever 11 in Evert is pivotable about the axis 12, the

lever 11 is incapable of providing any such support. As a consequence, the structure of the Evert patent can be distinguished from the present invention.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 14-17 were rejected under 35 U.S.C. §102(b) over U.S. Patent No. 5,350,891 to Ditzig. This rejection is respectfully traversed.

Ditzig discloses a wobble stick control switch assembly for operating remotely adjusted vehicle outside rear-view mirrors. It is clear from the description and drawings that only the stick 120 and knob 122 and perhaps the top surface of the housing shell 116 would be exposed to the operator. As a consequence, the Ditzig patent lacks at least structure that provides support for an operator to resist effects of external movements resulting from movement of a machine. Indeed, the housing shell 116 is not even remotely adapted for gripping due in part to the presence of apparently sharp exterior edges. Moreover, the knob 122, stick 120 and housing shell 116 can hardly be said to define a substantially continuous profile as claimed.

For at least these reasons, Applicant respectfully submits that the rejection is misplaced. With respect to dependent claims 15-17, Applicant submits that the claims are allowable at least by virtue of their dependency on an allowable independent claim. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 18 and 19 have been added.

In view of the foregoing amendments and remarks, Applicant respectfully submits that the claims are patentable over the art of record and that the application is in condition for allowance. Should the Examiner believe that anything further is desirable in order to

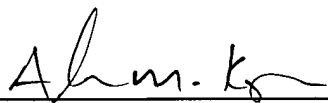
place the application in condition for allowance, the Examiner is invited to contact Applicant's undersigned attorney at the telephone number listed below.

Prompt passage to issuance is earnestly solicited.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached pages are captioned "**Version With Markings To Show Changes Made.**"

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 
Alan M. Kagen
Reg. No. 36,178

AMK:jls
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS

1. (Amended) A split grip control lever comprising:

a fixed base portion; and

a movable upper portion that is separately pivotable relative to the fixed base portion, wherein the movable upper portion and the fixed base portion define a substantially continuous profile, and wherein the movable upper portion and the fixed base portion define means for an operator to resist effects of external forces via one hand while maintaining control of the movable upper portion with said one hand.

3. (Amended) A split grip control lever according to claim 2, wherein the control device is disposed at a substantially central position relative to the [lever] substantially continuous profile such that a pivot point of the control shaft is centrally disposed relative to the [lever] substantially continuous profile.

4. (Amended) A split grip control lever according to claim 2, wherein the fixed base portion is fixedly securable to a surface, and wherein the control device is disposed at a position spaced from the surface at a substantially central position relative to the [lever] substantially continuous profile.

10. (Amended) A control lever for machinery comprising:

a fixed based portion fixedly securable to a surface of the machinery; and

a control portion disposed adjacent the fixed base portion and movable relative to the fixed base portion, the control portion being separated from the fixed base portion via

a split line and being contiguous with the fixed base portion to define a substantially continuous profile, wherein the fixed base portion and the control portion define means for an operator to resist effects of external forces via one hand while maintaining control of the control portion with said one hand.

14. (Amended) A machine comprising:

a machine frame supporting at least one movable element; and

a control lever secured to the machine frame, the control lever comprising:

a fixed base portion fixedly secured to the machine frame, the fixed base portion providing support for an operator to resist effects of external movements resulting from movement of the machine, and

a movable upper portion that is separately pivotable relative to the fixed base portion for controlling movement of the at least one movable element, wherein the movable upper portion and the fixed base portion define a substantially continuous profile.